

30295

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE:

B-217529

DATE: January 25, 1985

MATTER OF:

Blumfeldt Engineering Co.

DIGEST:

A protest to GAO following an initial protest to the contracting agency not filed within 10 working days of formal notification of the agency's denial of the initial protest is untimely and will not be considered.

Blumfeldt Engineering Co. protests the Marine Corps' contract award under request for quotations (RFQ) M67004-84-Q-2046 to Fairmont Railway Motors, a firm which had been previously identified to the agency as Blumfeldt's chief supplier. Blumfeldt also requests reimbursement of its expected profit and its proposal preparation costs. We dismiss the protest.

The protester states that it submitted the sole quote on a prior RFO (No. M67004-84-Q-2034), and the Marine Corps requested that it supply a detailed price breakdown of that quote. The breakdown listed Fairmont as Blumfeldt's source of supply. The protester contends that the contracting officials then issued the subject RFQ, solicited a lower quote from Fairmont, and awarded it the contract. Blumfeldt contends that the agency acted improperly by using its supplier to compete against it.

The record shows that after contacting the brand name manufacturer (Fairmont) to verify the reasonableness of Blumfeldt's quote, the Marine Corps found the quote to be excessive. It then requested a best and final offer, which it also found unreasonable. The agency added Fairmont to the bidder's list and issued a new RFQ, to which the protester and Fairmont responded. Fairmont submitted the low quote and was awarded the contract. Upon learning of the proposed award to Fairmont, Blumfeldt filed a protest with the agency.

031083

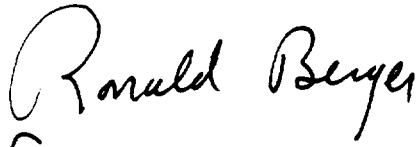
B-217529

If a protest is filed with the contracting agency, our Bid Protest Regulations require that any subsequent protest to this Office be filed within 10 working days of notice of the agency's initial adverse action. 4 C.F.R. § 21.2(a) (1984). Furthermore, the initial agency protest must be filed within 10 working days after the basis for protest is or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2).

It is not clear from the record when Blumfeldt learned of its basis for protest, i.e., that Fairmont had been included in the competition. Assuming, however, that the September 10, 1984, protest to the Marine Corps was timely, any subsequent protest to us had to be filed within 10 working days of Blumfeldt's receipt of the Marine Corps' November 1, 1984, denial of Blumfeldt's initial protest. Blumfeldt's December 27 protest to this Office was filed substantially later than 10 working days after the adverse agency action and is, therefore, untimely.

The protester has requested reimbursement of its expected profit and its proposal preparation costs. A claim for such preparation costs which is submitted in connection with an untimely protest will not be considered by this Office. The Big Picture Co., B-210535, Feb. 17, 1983, 83-1 CPD ¶ 166. Moreover, even if a protester is wrongfully denied a contract, there is no legal basis that would permit the recovery of anticipated profits or similar monetary damages. JKK Commodity Co., B-215093, Aug. 22, 1984, 84-2 CPD ¶ 211.

The protest is dismissed.


for Comptroller General
of the United States